

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE LITIGATION

) MDL No. 1456
) Civil Action No. 01-CV-12257 PBS
)

THIS DOCUMENT RELATES TO
ALL ACTIONS

) Judge Patti B. Saris
)
)

**DEFENDANTS' MOTION TO ENFORCE THE SUBPOENA FOR,
AND COMPEL, THE DEPOSITION OF PATRICIA KAY MORGAN**

Defendants Novartis Pharmaceuticals Corporation ("Novartis") and Bristol-Myers Squibb Company ("BMS"), on behalf of Defendants in the captioned actions, respectfully move this Court for an order compelling Patricia Kay Morgan to appear promptly to give testimony by deposition pursuant to Defendants' March 17, 2004 Subpoena *ad testificandum* to Patricia Kay Morgan.¹

In support of this Motion, Defendants submit the attached Memorandum In Support Of Defendants' Motion To Enforce The Subpoena For, And To Compel, The Deposition Of Patricia Kay Morgan, the Declaration of Saul P. Morgenstern and the exhibits attached to the Declaration of Saul P. Morgenstern.

¹ Although Fed. R. Civ. P. 45 ordinarily requires a witness wishing to resist a subpoena to move to quash the subpoena, Defendants have agreed to accommodate Ms. Morgan's counsel's schedule by proceeding by motion to compel, and Ms. Morgan has agreed to submit to the jurisdiction of this Court (rather than proceed in the Northern District of California, where the Subpoena was issued) for the purpose of determining her obligation to comply with the Subpoena. See Robert J. Hawley Letter to Steven M. Edwards and Saul P. Morgenstern, July 16, 2004, annexed as Exhibit B to the Declaration of Saul P. Morgenstern, dated July 29, 2004.

Dated: Boston, Massachusetts
July 30, 2004

Respectfully submitted,

/s/ Thomas E. Dwyer

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2), the undersigned hereby certify that counsel for Defendants contacted counsel for Ms. Morgan and First DataBank regarding the issues addressed in this Motion but were unable to resolve or narrow the issues.

Dated: Boston, Massachusetts
July 29, 2004

Respectfully submitted,



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*Attorneys for Defendant
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CERTIFICATE OF SERVICE

I, Benjamin M. Stern, on July 30, 2004, caused to be served the foregoing documents by hand upon Robert J. Hawley, Esq., Office of General Counsel, The Hearst Corporation, 959 Eighth Avenue, New York, New York 10019, counsel for Patricia Kay Morgan and First DataBank, Inc., and by Verilaw upon all counsel of record.

/s/ Benjamin M. Stern
Benjamin M. Stern